

Bill No. 36-04
Concerning: Commission on Human
Rights—Discrimination in
Housing—Amendments
Revised: _____ Draft No. _____
Introduced: October 26, 2004
Expires: April 26, 2006
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Perez and Subin

AN ACT to:

- (1) identify specific categories of lending activities that constitute discriminatory housing practices;
- (2) clarify that individuals must not engage in discriminatory lending practices;
- (3) authorize compensatory damages consistent with the federal Fair Housing Act;
- (4) require the Commission on Human Rights to provide the Executive and Council with an annual report on discriminatory lending practices in the County; and
- (5) generally amend County law regarding discrimination in real estate.

By Amending

Montgomery County Code
Chapter 27, Commission on Human Rights
Division 2. Discrimination in Real Estate
Sections 27-5, 27-6, 27-8, and 27-12

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 Sec. 1. Findings and purpose.

Studies show that predatory lending practices have increased in the last few years and that some lenders aggressively market high-cost home loans with exorbitant and unnecessary fees and engage in other unfair credit practices that strip families of the equity in their homes.

6 In the County, subprime mortgages are disproportionately offered to and entered into
7 by minority homeowners, as documented by the Calvin Bradford and Associates study,
8 “Overview of Home Lending in Montgomery County (1999-2000)”.

9 Although not all subprime loans are the product of predatory lending practices,
0 studies demonstrate that a substantial percentage of people with subprime loans could
1 qualify for less expensive loans.

2 Predatory lending impairs the economic strength of County homeowners, families,
3 and neighborhoods.

4 It is the intent of the County to prevent predatory lending practices directed at
5 households because of their race, color, religious creed, ancestry, national origin, sex,
6 marital status, disability, presence of children, source of income, sexual orientation, or age.
7 Some indicators of predatory lending practices include, but are not limited to: refinancing
8 mortgages with no tangible net benefit to the borrower; charging abusive prepayment
9 penalties; financing excessive points and fees; steering borrowers to more expensive
10 mortgages than what they would otherwise qualify for; and financing single premium credit
11 insurance.

22 **Sec. 2. Sections 27-5, 27-6, 27-8, and 27-12 are amended as follows:**

27-5. Duties generally.

24 (a) The Commission must:

05 * * *

26 (11) Provide to the County Executive and County Council:

(A) a quarterly written or oral report of Commission activities and recommendations within 30 days after each calendar quarter; [and]

(B) an annual written report summarizing Commission activities, goals, needs, and recommendations promptly after each calendar year[.]; and

(C) by March 1 of each year, an annual written report for the preceding calendar year detailing the number and type of housing discrimination complaints received under this Section, including the age, gender, and race of the complainant, the area where complainant resides, the decision of the Commission, and the type and amount of the penalty imposed. This report must also identify overall lending patterns in the County for prime and subprime loans as compiled from Home Mortgage Disclosure Act and Fair Housing Administration data. This report must be separate from the Commission's annual report.

* * *

27-6. Definitions.

The following words and phrases have the following meanings, unless the context indicates otherwise:

[(a)]	*	*	*
[(b)]	*	*	*
[(c)]	*	*	*
[(d)]	*	*	*
[(e)]	*	*	*
[(f)]	*	*	*
[(g)]	*	*	*
[(h)]	*	*	*
[(i)]	*	*	*
[(j)]	*	*	*
[(k)]	*	*	*
[(l)]	*	*	*
[(m)]	*	*	*
[(n)]	*	*	*
[(o)]	*	*	*
[(p)]	*	*	*
[(q)]	*	*	*

Mortgage loan means the making of a loan or providing other financial assistance to purchase, refinance, construct, improve, repair, or maintain a dwelling or a loan that is secured by a dwelling.

[(r)] * * *
[(s)] * * *
[(t)] * * *
[(u)] * * *
[(v)] * * *
[(w)] * * *
[(x)] * * *
[(y)] * * *
[(z)] * * *
[(aa)] * * *
[(bb)] * * *
[(cc)] * * *
[(dd)] * * *
[(ee)] * * *
[(ff)] * * *

27-8. Penalties and relief.

- (a) *Damages and other relief for complainant.* After finding a violation of this article, the case review board may order the payment of damages (other than punitive damages) and any other relief that the law and the facts warrant, such as:
- (1) compensation for:
- (A) reasonable attorney's fees;
 - (B) property damage;
 - (C) personal injury;
 - (D) unreimbursed travel or other reasonable expenses;
 - (E) damages [up to \$5,000] for humiliation and embarrassment, based on the nature of the humiliation and embarrassment, including its severity, duration, frequency, and breadth of observation by others;
- [and]

(F) financial losses resulting from the discriminatory act; and
[(F)] (G) interest on any damages from the date of the discriminatory act, as
provided in subsection (c).

(2) equitable relief to prevent the discrimination and otherwise effectuate the
purposes of this Chapter;

(3) consequential damages, such as lost wages from employment discrimination
or higher housing costs from housing discrimination, for up to 2 years after
the discrimination, not exceeding the actual difference in expenses or
benefits that the complainant realized while seeking to mitigate the
consequences of the discrimination (such as income from alternate
employment or unemployment compensation following employment
discrimination);

(4) any other relief that furthers the purposes of this Article or is necessary to
eliminate the effects of any discrimination prohibited under this Article.

* * *

27-12. Discriminatory housing practices.

(a) A person must not, because of race, color, religious creed, ancestry, natural origin,
sex, marital status, disability, presence of children, source of income, sexual
orientation, or age:

(1) refuse, or refuse to negotiate, to sell, broker, appraise, lease, sublease, rent,
assign, or otherwise transfer the title, leasehold, or other interest in any
housing;

(2) represent that housing is not available for inspection, sale, lease, sublease,
rental, assignment, or other transfer when it is available;

(3) otherwise deny or withhold any housing from any person;

(4) include in the terms, conditions, or privileges of any sale, lease, sublease,
rental, assignment, or other transfer of any housing, any clause, condition, or
restriction discriminating against any person in the use or occupancy of that
housing; or

- (5) discriminate in the furnishing of any facilities, repairs, improvements, or services, or in the terms, conditions, privileges, or tenure of occupancy of any person.
- (b) A lending institution or a person must not, because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, source of income, sexual orientation, or age, discriminate in:
- (1) lending money;
 - (2) guaranteeing loans;
 - (3) accepting a deed of trust or mortgage;
 - (4) making available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair, or maintenance of any housing;
 - (5) fixing the rates, terms, conditions, or provisions of any financial assistance;
- or
- (6) extending any other service in connection with housing finance.
- (c) A person must not, because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, source of income, sexual orientation, or age, discriminate in a loan for a dwelling by:
- (1) steering, which means restricting or attempting to restrict a person's choices because of factors other than a person's income and credit level in connection with seeking, negotiating, buying, or renting a dwelling, including seeking a mortgage loan for a dwelling. Steering includes: (1) discouraging a person from a particular mortgage loan with more favorable terms; (2) directing a person to or away from a housing or mortgage loan product, program, or service with more favorable terms; (3) offering more limited mortgage loan opportunities or less favorable mortgage loan terms; or (4) delaying a mortgage loan application or approval;
 - (2) originating a predatory mortgage loan, as determined by evaluating one or more of the following factors: if the loan product is suitable for the borrower based on income and credit levels; if the loan product includes the financing of single premium credit insurance, excessive points, fees, prepayment

penalties or a mandatory arbitration clause; or if the mortgage does not
provide a tangible net benefit to the borrower; or

(3) engaging in any practice described in this Section by adopting, applying, or
using a policy or practice that operates to discriminate without a compelling
business justification and without establishing that there is no less
discriminatory way to advance the business justification with a less
discriminatory effect.

[(c)] (d) (1) A person must not:

(A) publish or circulate, or cause to be published or circulated, any housing notice,
statement, listing, or advertisement;

(B) announce a policy, or use any form of application for the purchase, lease, rental, or
financing of any housing; or

(C) make any record or formal business inquiry in connection with the prospective
purchase, lease, rental, or financing of any housing; indicating that race, color,
religious creed, ancestry, national origin, sex, marital status, disability, presence of
children, source of income, sexual orientation, or age could influence or affect any
act describe in subsections (a), [and] (b), and (c).

(2) This subsection does not prohibit:

(A) use of a logo or other means of advertising that housing is suitable or adapted to use
by persons with a disability; or

(B) keeping records or making reports required by federal, State, or County law.

[(d)] (e) A person must not:

(1) assist in, compel, or coerce any discriminatory practice under this subdivision,

(2) obstruct or prevent enforcement or compliance with this subdivision, or

(3) attempt directly or indirectly to commit any discriminatory practice under this
subdivision.

[(e)] (f) A person must not:

(1) directly or indirectly induce or attempt to induce any person to transfer an interest in
any housing by representations regarding the existing or potential proximity of real
property owned, used, or occupied by any person of any particular race, sex, color,

181 religious creed, ancestry, national origin, disability, source of income, sexual
182 orientation, age, or the presence of children.

183 (2) promote, induce, influence, or attempt to promote, induce, or influence by the use of
184 postal cards, letters, circulars, telephone, visitation, or any other means, directly or
185 indirectly, a property owner, occupant, or tenant to list for sale, sell, remove from,
186 lease, assign, transfer, or otherwise dispose of any housing having the effect of
187 inciting neighborhood unrest or community tension in any street, block,
188 neighborhood, or any other area by referring to the race, sex, color, religious creed,
189 ancestry, national origin, disability, presence of children, source of income, sexual
190 orientation, or age of actual or anticipated neighbors, tenants, or other prospective
191 buyers or occupants of any housing.

192 (3) make or cause another person to make a statement or in any other manner attempt to
193 incite neighborhood unrest or community tension in any street, block, neighborhood,
194 or any other area to obtain a listing of any housing for sale, rental, assignment,
195 transfer, or other disposition by referring to the race, sex, color, religious creed,
196 ancestry, national origin, disability, presence of children, source of income, sexual
197 orientation, or age of actual or anticipated neighbors, tenants, or other prospective
198 buyers or occupants of any housing where the statement is false or materially
199 misleading or where there is insufficient basis to judge its truth or falsity to warrant
200 making the statement.

201 (4) make any representation to any prospective purchaser or lessee that any housing in a
202 particular block, neighborhood, or area may undergo, is undergoing, or has
203 undergone a change with respect to racial, color, religious, nationality, presence of
204 children, source of income, disability, sex, sexual orientation, age, or ethnic
205 composition.

206 (5) place a sign or other display either purporting to offer for sale, lease, assignment,
207 transfer, or other disposition, or tending to lead to the belief that a bona fide offer is
208 being made to sell, lease, assign, transfer, or otherwise dispose of any housing that is
209 not in fact available or offered for sale, lease, assignment, transfer, or other
210 disposition.

(6) induce or attempt to induce the sale or listing for sale of any housing by representing that the presence or anticipated presence of persons of any particular race, sex, color, religious creed, ancestry, national origin, disability, presence of children, source of income, sexual orientation, or age in the area will or may result in:

(A) lower property values;

(B) increased criminal or antisocial behavior in the area; or

(C) a decline in quality of the schools serving the area.

(7) induce or attempt to induce the sale or listing for sale of any housing by representing that the presence or anticipated presence of persons of any particular race, sex, color, religious creed, ancestry, sexual orientation, presence of children, source of income, or national origin in the area will or may result in a change in the racial, color, religious, age, nationality, or ethnic composition of the block, neighborhood, or area where the property is located.

[(f)] (g) A person must not retaliate against a person for:

(1) lawfully opposing any discriminatory practice under this subdivision, or

(2) filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this subdivision.

[(g)] (h) A person, must not because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, source of income, sexual orientation, or age deny any other person:

(1) access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of buying, selling, or renting housing in the County, or

(2) discriminate against any person in the terms or conditions of the access, membership, or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of buying, selling, or renting housing.

[(h)] (i) A person must not discriminate against a person with a disability in the sale or rental of housing such as by:

(1) refusing to allow a person with a disability to make reasonable modifications to existing premises that the person does or would occupy, despite the person's

242 willingness and ability to pay for the modifications, and reasonably restore any
243 interior modification upon vacating, if the modifications are necessary to provide
244 full enjoyment of the premises; or
245 (2) refusing to make reasonable accommodations necessary to afford a person with a
246 disability the equal opportunity to use and enjoy a dwelling.

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250 *Approved:*

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Steven A. Silverman, President, County Council	Date
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252 *Approved:*

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Douglas M. Duncan, County Executive	Date
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254 *This is a correct copy of Council action.*

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Mary A. Edgar, CMC, Clerk of the Council	Date
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